

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

RICHARD SCOTT BENNETT,

Plaintiff,

v.

CIVIL ACTION NO. 1:18-00464

DONNIE AMES Superintendent,
Mount Olive Correctional Complex,

Defendant.

MEMORANDUM OPINION AND ORDER

By Standing Order, this action was referred to United States Magistrate Judge Dwane L. Tinsley for submission of findings and recommendations regarding disposition pursuant to 28 U.S.C.A. § 636(b)(1)(B). Magistrate Judge Tinsley submitted to the court his Findings and Recommendation on October 28, 2019, in which he recommended that the district court grant defendant's motion for stay and plaintiff's motion for leave to hold Section 2254 petition in abeyance; stay and hold in abeyance plaintiff's section 2254 petition pending his exhaustion of available state court remedies concerning his unexhausted claims in Grounds One, Three, and Four thereof; deny defendant's motion to dismiss without prejudice due to failure to exhaust state remedies; transfer this matter to the court's inactive docket until further order of the court; and order the plaintiff to notify the court and the respondent, within 14 days of the resolution of his state habeas proceedings, of the result thereof and his intent to proceed with this matter.

In accordance with the provisions of 28 U.S.C.A. § 636(b), the parties were allotted fourteen days, plus three mailing days, in which to file any objections to Magistrate Judge Tinsley's Findings and Recommendation. The failure of any party to file such objections constitutes a waiver of such party's right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

The parties failed to file any objections to the Magistrate Judge's Findings and Recommendation within the allotted time period. Having reviewed the Findings and Recommendation filed by Magistrate Judge Tinsley, the court adopts the findings and recommendations contained therein. Accordingly, the court hereby:

- 1) **GRANTS** defendant's motion for stay and plaintiff's motion for leave to hold Section 2254 petition in abeyance;
- 2) **STAYS** this matter and **HOLDS IN ABEYANCE** plaintiff's section 2254 petition pending his exhaustion of available state court remedies concerning his unexhausted claims in Grounds One, Three, and Four thereof;
- 3) **DENIES** defendant's motion to dismiss without prejudice due to failure to exhaust state remedies;
- 4) **DIRECTS** the Clerk to remove this matter from the court's active docket and transfer it to the court's inactive docket until further order of the court; and

5) **DIRECTS** plaintiff to notify the court and the respondent, within 14 days of the resolution of his state habeas proceedings, of the result thereof and his intent to proceed with this matter.

The Clerk is further directed to forward a copy of this Memorandum Opinion and Order to plaintiff, pro se, and counsel of record.

IT IS SO ORDERED this 24th day of February, 2020.

ENTER:

David A. Faber

David A. Faber
Senior United States District Judge